

BUSINESS REPORT

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE

Date: Tuesday, March 17, 2009

Time: 3:00 pm

Place: Capitol

Room: 335

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

HB 343, HJ 1

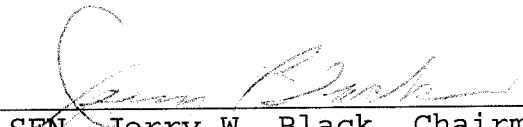
EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

HJ1-BC _____

SB-448-DPAA _____

COMMENTS:


SEN. Jerry W. Black, Chairman

MONTANA STATE SENATE
Roll Call
ENERGY & TELECOMMUNICATIONS COMMITTEE

DATE: 3-17-2009

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
SENATOR JERRY BLACK, CHAIR	✓	
SENATOR AUBYN CURTISS, VICE CHAIR	✓	
SENATOR ROY BROWN	✓	
SENATOR RON ERICKSON	✓	
SENATOR JOHN ESP	✓	
SENATOR KELLY GEBHARDT	✓	
SENATOR BOB HAWKS	✓	
SENATOR DAVE LEWIS	✓	
SENATOR LYNDA MOSS	✓	
SENATOR SHARON STEWART-PEREGOY		✓
SENATOR MITCH TROPILA		✓



SENATE STANDING COMMITTEE REPORT

March 18, 2009

Page 1 of 1

Mr. President:

We, your committee on **Energy and Telecommunications** recommend that **House Joint Resolution 1** (third reading copy -- blue) be concurred in.

Signed: _____

Jerry Black
Senator Jerry W. Black, Chair

To be carried by Senator Bob Hawks

- END -

Committee Vote:

Yes 10, No 0

Fiscal Note Required ____

HJ0001001SC03871.sdr

DR



SENATE STANDING COMMITTEE REPORT

March 18, 2009

Page 1 of 12

Mr. President:

We, your committee on **Energy and Telecommunications** recommend that **Senate Bill 498**
(first reading copy -- white) **do pass as amended.**

Signed: _____

Jerry Black
Senator Jerry W. Black, Chair

And, that such amendments read:

1. Title, page 1, line 9.

Following: "WELLS;"

Insert: "REQUIRING THE BOARD TO SOLICIT AND CONSIDER COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO ISSUING AN INJECTION PERMIT AND PRIOR TO ISSUING A CERTIFICATE OF COMPLETION; REQUIRING THE BOARD TO SOLICIT AND CONSIDER COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO TRANSFERRING LIABILITY TO THE STATE; REQUIRING TESTING AFTER ISSUANCE OF A CERTIFICATE OF COMPLETION AND PRIOR TO TRANSFER OF LIABILITY;"

2. Title, page 1, line 11.

Following: "RESERVOIRS;"

Insert: "EXEMPTING A CARBON DIOXIDE INJECTION WELL FROM GROUND WATER PERMIT REQUIREMENTS;"

Following: "70-30-105,"

Insert: "75-5-103, 75-5-401, 77-3-430,"

3. Page 1, line 17 through line 23.

Strike: section 1 in its entirety

Renumber: subsequent sections

4. Page 2, line 7.

Strike: "or"

5. Page 2, line 9.

Following: "project"

Committee Vote:

Yes 11, No 0

Fiscal Note Required ____

SB0498001SC.sdr

OR

Insert: "; (c) change or alter common law or statutory provisions regarding the ownership of surface or subsurface rights; or (d) diminish, impair, or in any way affect the rights of a natural gas public utility, as defined in 82-10-301, to own, operate, or control a gas storage reservoir in use prior to [the effective date of this section] "

6. Page 2, line 14.

Strike: "prior" through "completion,"

Following: the second "to"

Insert: "indefinitely"

7. Page 2, line 15.

Strike: "[section 5(4)(f)]"

Insert: "[section 4(9)(a)]"

Following: "operator."

Insert: "If a geologic storage operator is required to maintain liability pursuant to [section 4(9)(b)], the board may not remit the fee."

8. Page 2, line 21 through line 22.

Following: "managing"

Strike: "a"

Strike: "reservoir" on line 21 through "[section 5(5)]" on line 22

Insert: "reservoirs pursuant to [section 4(6) and (8)]"

9. Page 2, line 24.

Strike: "[section 5]"

Insert: "[section 4]"

10. Page 2, line 30.

Following: "issued"

Insert: "pursuant to [section 4(1)]"

11. Page 3, line 1.

Strike: "[section 5(5)]" through "[section 5(4)(f)]"

Insert: "[section 4(7)]"

12. Page 3, line 7 through page 4, line 13.

Strike: section 5 in its entirety

Insert: "NEW SECTION. **Section 4. Certificate of completion -- department of environmental quality participation -- transfer of liability.** (1) Pursuant to subsection (3), after carbon dioxide injections into a reservoir end and upon completion of the certification requirements pursuant to subsections (4) and (5), the board shall issue the geologic storage operator a certificate of project completion.

(2) The board may adopt rules pursuant to 82-11-111

necessary for implementing subsection (4), including:

- (a) rules for public notice and hearing; and
- (b) any other rules necessary for administration of this section.

(3) The certificate may not be issued until at least 10 years after carbon dioxide injections end.

(4) Subject to subsection (5), the certificate may be issued only if the geologic storage operator:

- (a) is in full compliance with regulations governing the geologic storage reservoir pursuant to this part;

- (b) shows that the geologic storage reservoir is reasonably expected to retain the carbon dioxide stored in it;

- (c) shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity;

- (d) shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the board;

- (e) shows that the carbon dioxide in the geologic storage reservoir has become stable, which means that it is essentially stationary or chemically combined or, if it is migrating or may migrate, that any migration will be unlikely to cross the geologic storage reservoir boundary; and

- (f) shows that the geologic storage operator will continue to provide adequate bond or other surety after receiving the certificate of completion for at least 10 years following issuance of the certificate of completion and that the operator continues to accept liability for the geologic storage reservoir and the stored carbon dioxide.

(5)(a) Prior to issuing a certificate of completion, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(b) Notwithstanding subsection (5)(a), the board makes the final decision on issuance of the certificate.

(6) After issuing a certificate of completion, the board, in conjunction with the operator, shall monitor the wells and reservoir, verifying compliance with subsection (4), for a period of 10 years.

(7)(a) Following the monitoring and verification required in subsection (6) and subject to subsections (7)(b) and (7)(c), the geologic storage operator may transfer title to the geologic storage reservoir and to the stored carbon dioxide to the state.

(b) Prior to a transfer of title, the monitoring pursuant to subsection (6) must show, to the satisfaction of the board, that:

- (i) the reservoir and wells are in full compliance with regulations pursuant to this part; and

- (ii) the reservoir is reasonably expected to maintain its structural integrity and will not allow carbon dioxide to move out of one stratum into another or pollute drinking water supplies.

(c)(i) Prior to a transfer of title, the board shall

solicit, document, consider, and address comments from the department of environmental quality.

(ii) Notwithstanding subsection (7)(c)(i), the board makes the final decision on the transfer of title.

(8) If liability is transferred pursuant to subsection (7):

(a) title is transferred, without payment or any compensation, to the state;

(b) title acquired by the state includes all rights and interests in and all responsibilities associated with the stored carbon dioxide;

(c) the geologic storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements and liability associated with the geologic storage reservoir;

(d) any bonds or other surety posted by the geologic storage operator must be released; and

(e) monitoring and managing the geologic storage reservoir is the state's responsibility to be overseen by the board until the federal government assumes responsibility for the long-term monitoring and management of geologic storage reservoirs.

(9)(a) If the operator does not transfer title to the state pursuant to subsection (7), the operator indefinitely accepts liability, except as provided in subsection (10), for the stored carbon dioxide and the geologic storage reservoir.

(b) If the operator is found not to be in compliance with subsection (7)(b), the operator retains liability until the operator is able to meet the requirements.

(10) After receiving a certificate of completion, every 10 years after completing the monitoring and verification required by subsection (6), an operator may petition the board and request to transfer liability to the state and be released from liability pursuant to subsection (7). An operator who petitions the board pursuant to this subsection (10) may not request that the fee required by [section 2(1)] be remitted."

Renumber: subsequent subsections

13. Page 5.

Following: line 24

Insert: "Section 8. Section 75-5-103, MCA, is amended to read:

"75-5-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of

water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(10) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(11) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(12) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(13) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(16) "Local department of health" means the staff, including

health officers, employed by a county, city, city-county, or district board of health.

(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(18) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(20) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(22) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(24) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(25) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of

the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(c) Contamination of ground water within a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1, is not pollution and does not require a mixing zone.

(26) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(28) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(31) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance

with applicable surface water quality standards.

(33) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(35) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Insert: "Section 9. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity.

These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20-; or

(l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4) (a) through (4) (c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.""

"Section 10. Section 77-3-430, MCA, is amended to read:

"77-3-430. Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the storage of carbon dioxide in a geologic storage reservoir or the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with ~~such~~ pooling agreements and ~~such~~ unit plans of operation. However, ~~such~~ agreements may not change the percentage of royalties ~~to be~~ paid to the state from the percentages ~~as~~ fixed in its leases. The board may modify existing pooling and unit agreements ~~so as~~ to commit the state lands included ~~therein~~ in the pooling or unit agreements for as long as the unitized substance or substances for which the state lands are committed ~~is~~ are produced from any lands in the unit."

Renumber: subsequent sections

14. Page 10, line 7.

Strike: "The"

Insert: "Subject to subsection (7), the"

15. Page 10, line 23.

Strike: "[section 3]"

Insert: "[section 2]"

16. Page 10, line 30.

Following: "(7)"

Insert: "(a)"

Strike: "may"

Insert: "shall"

17. Page 11, line 1.

Following: "solicit"

Insert: ", document, consider, and address"

18. Page 11.

Following: line 1

Insert: "(b) Notwithstanding subsection (7)(a), the board makes the final decision on issuance of a permit."

19. Page 12, line 20.

Strike: "[section 5(5)]"

Insert: "[section 4(7)]"

20. Page 14, line 21.

Strike: "[section 5]"

Insert: "[section 4]"

21. Page 14, line 22.

Strike: "[section 3]"

Insert: "[section 2]"

22. Page 19, line 3.

Strike: "[section 5(5)]"

Insert: "[section 4(7)]"

23. Page 19, line 13.

Strike: "7"

Insert: "6"

24. Page 19, line 15.

Strike: "7"

Insert: "6"

25. Page 19, line 27.

Strike: "3"

Insert: "2"

Strike: "23"

Insert: "25"

26. Page 19, line 30.

Strike: ", 2,"

Strike: "24"

Insert: "26"

Strike: "27"

Insert: "29"

- END -

MONTANA STATE SENATE
Visitors Register

Energy & Telecommunications Committee

Date 3-17-09

Bill No. HJ1 Sponsor(s) Representative HJ1

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Name and Address	Representing	Support	Oppose	Inf.
ELLEN SIMPSON	MCOPA	X		
BOB HARDIN	OTD	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

Energy & Telecommunications Committee

Date 3-17-2009

Bill No. HB 343 Sponsor(s) Representative Noonan

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Name and Address	Representing	Support	Oppose	Inf.
Bob Hardin	GID	X		
John Fitzgerald	Northwest	X		
Mike Murphy	MWRA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.